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ANALYSIS OF SENATE BILLS 927 AND 1160

Bill Number: Senate Bills 927 (S-2) and 1160 (S-1)
Topic: Register of Deeds Filing Requirements
Updates to Chapter 65 of the Statutes of 1846
Sponsor-SB 927: Senator Tupac Hunter
Co-Sponsors: Senators Cherry, Gleason, Thomas, Scott, and Van Woerkom.
Sponsor-SB 1160: Senator Mark Jansen
Committee: Senate Local, Urban and State Affairs
House
Date Introduced: Senate Bill 927: November 29, 2007
Senate Bill 1160: February 28, 2008
Date Passed Senate: October 2, 2008
Date Enrolled:
Date of Analysis: November 3, 2008
Position: Not opposed

Problem/Background: Local register of deeds offices record all documents pertaining to real property in the jurisdiction, including deeds, mortgages, land contracts, liens and other documents pertaining to real estate. These companion bills represent a cooperative effort between the Association of Registers of Deeds, the State Bar, the Michigan Land Title Association, and other interested parties to update recording requirements. Some of the revised provisions dated back to the 19th Century. The bills consider current technology and processes, and recognize past increases in the number of real estate transactions.

Problems with the existing law became even more evident when refinancing boomed in the housing market. Requests to record documents were coming in too fast for many jurisdictions to keep up. These excesses led to abuses of the system; many properties were “flipped” for inflated profits and to perpetrate fraud on the public, and it was difficult to track these transactions. The need for reform became all too evident.

Description of Bills: Senate Bill 927 is a companion bill to Senate Bill 1160, and together they update 1846 RS 65. The older language of the statute is updated and the bills add the following new provisions:

1. Senate Bill 927 provides the following:
 - Eliminates the format requirements for an entry book of deeds and mortgages.
 - Requires the Register of Deeds to record a date, hour and minute of delivery of a document for recording.

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- Provides that each document submitted must be accessible for public review.
- Allows submission in electronic or other medium.
- Provides for creation of a temporary searchable journal containing the date of delivery, title of the instrument and the names of the parties.
- A reasonable fee is allowed, not to exceed \$15.00 for 15 minutes of public review of an original document; no fee is allowed for any other review or search for public review of any instrument delivered to a register.
- Once a permanent record is established, the temporary searchable journal and the fee for review of the original document do not apply.
- When the register assigns the liber and page or another unique identifying number, the information represents *prima facie* evidence that a document satisfies all recording requirements, including the payment of fees.
- Proper registration is considered proper notice to any other person except for the recorded landowner of any lien, rights and interests acquired by or involved in the proceedings.
- If multiple dates or times appear on a document, the later date and time control the priority of the instrument over other recorded instruments.
- To establish any earlier time and date of delivery, a court action must be initiated within 90 days of delivery of a document with more than one date and time of delivery on it. A notice of *Lis Pendens* must also be filed.
- Each Register of Deeds must keep a permanent index of recorded instruments either electronically, or by other media.
- Computerized indexes must be maintained so that they can be searched alphabetically for the names of each party to each instrument.

2. Senate Bill 1160 contains the following provisions:

- The Register of Deeds may note the date and time an instrument was accepted after it meets all recording requirements, and it must also show the liber and page or another unique identifying number.
- The Register must keep a general index of instruments accepted for recording, which contains information specified by the bill.
- The information must include unique identifying information sequentially assigned; instrument type; date processed once the filing meets all requirements; location of the land including section, town and range, platted description, and other lawfully required descriptions; other reference information required.
- Computerized indexes must allow an alphabetical search of the names of each party to each instrument that has been recorded.

Summary of Arguments

Pro: These amendments provide specific requirements for filing recorded documents to reduce confusion and lack of specificity for users of recorded material and registers of deeds.

The revisions to the act acknowledge that electronic documents may be used, and also require a way to search the many documents that registers of deeds must accept and record today.

The bill provides a provision to contest any date of filing, and provides greater detail to filing documents to reduce the number of future challenges to the recording priority of a document. By

requiring a temporary index, location of documents that have not been permanently filed will be much easier, reducing the ability to hide transactions from the public.

Con: No arguments against the legislation were heard during testimony, and none are known to the agency at this time. It is possible that some local Registers of Deeds may face costly changes to their recording systems.

Fiscal/Economic Impact

(a) **Department:** No fiscal impact.

(b) **State:** No fiscal impact.

(c) **Local Government:** The fiscal impact is unknown at this time.

(d) **Comments:** By taking immediate effect, some registers of deeds might be out of compliance, and therefore need to expend unknown amounts of funds to bring their recording systems up to date in a relative short period of time. The number and cost of these changes are unknown, and will vary by register of deeds offices.

Other State Departments: No concerns have been expressed to the department. There may be benefits realized by state agencies that need to determine the exact filing time and date of mortgages, titles or other legal documents.

Any Other Pertinent Information: The bills are supported by the State Bar, the Association of Registers of Deeds, and the Michigan Land Title Association, and Fidelity National Title Company.

Recent legislation, addressing related responsibilities of register of deeds offices, pertains to the redacting of individual social security numbers before accepting them for filing (2007 PA 53-58).

Administrative Rules Impact: None.